

In the Matter of Merchant Mariner's Document No. Z-506055 and all other Seaman Documents
Issued to: ROBERT LEE FERGUSON

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1291

ROBERT LEE FERGUSON

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 25 March 1960, an Examiner of the United States Coast Guard at New Orleans, Louisiana suspended Appellant's seaman documents upon finding him guilty of misconduct. The three specifications found proved allege that while serving as chief electrician on board the United States SS ARIZPA under authority of the document above described, on 24 June 1959, Appellant was wrongfully absent from his duties without permission; on 7 July 1959, he wrongfully had a rifle in his possession and damaged ship's property with it.

At the beginning of the hearing on 22 July and 5 October 1959 Appellant was present and entered pleas of not guilty to the charge and specifications. Throughout the balance of the hearing, Appellant was absent from the hearing. The Investigating Officer received a telegram from Appellant on 8 October 1959 stating that he was hospitalized and could not attend the hearing on 8 October. After leaving the hospital later in October, Appellant went to sea without contacting the Coast Guard. Two letters from the Examiner to Appellant, which were mailed in November were not answered. These letters were sent before the only witness at the hearing, the Chief Mate, testified against Appellant on 24 November.

In addition to this witness, whose testimony pertained to Appellant's possession and use of the rifle, the Investigating Officer submitted in evidence entries from the Official Logbook referring to all three specifications, and a deposition by the Master.

At the end of the hearing, the Examiner rendered the decision in which he concluded that the charge and three specifications had been proved. The Examiner then entered an order suspending all documents, issued to Appellant, for a period of three months outright plus six months on twelve months' probation.

FINDINGS OF FACT

Between 26 May and 20 July 1959, Appellant was serving as

chief electrician on board the United States SS ARIZPA and acting under authority of his document.

While the ship was at Hamburg, Germany on 24 June, Appellant failed to perform his duties during his regular working hours from 0800 to 1700. Appellant did not have permission to miss work on this date.

The ship was at Southhampton, England on 7 July 1959. On this date, Appellant had in his possession on the ship, without permission, a .22 caliber rifle which he fired at the door leading into the bathroom from his room. The result was approximately fifteen bullet holes or indentations in the bathroom door. Later, Appellant satisfactorily repaired the door.

Appellant's prior record consists of an admonition in 1947 for absence without leave.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that the findings are not supported by credible evidence; Appellant was denied his right to defend against the charges since the hearing was held on dates when Appellant could not personally attend; Appellant was denied due process of law; the findings are based on the testimony of an adverse, hostile witness, the Chief Mate, who was, at the time, the subject of charges by Appellant.

APPEARANCE ON APPEAL: Tobin and Ransom of San Francisco, California by Harold W. Tobin, Esquire, of Counsel

OPINION

The record indicates that the request on appeal for a new hearing should be denied.

Appellant's failure to be present to cross-examine the Chief Mate and to present other matters in defense was his own fault since he did not contact the Coast Guard although Appellant knew the hearing had commenced. The Coast Guard made every reasonable effort to inform Appellant of the hearing dates before proceeding. Therefore, Appellant was not improperly prevented from defending himself or denied due process of law when the hearing was concluded in his absence.

It is my opinion that the findings are based on credible evidence in the form of the testimony of the Chief Mate. This was accepted by the Examiner and is corroborated by an entry in the Official Logbook. Although the Chief Mate testified that Appellant said he did not know the gun was loaded, it would be unreasonable to assume that so many shots were fired accidentally. In any event, Appellant is responsible for the probable consequences of his acts.

There is no support for Appellant's implication that the Chief Mate was prejudicial against Appellant to the extent that the Chief Mate did not testify truthfully.

The Master's deposition establishes that he did not give Appellant permission to have the rifle on board. Official notice is taken of the statement in the Shipping Articles that no dangerous weapons were allowed on board.

The request for a new hearing is not granted.

ORDER

The order of the Examiner dated New Orleans, Louisiana, on 25 March 1960, is AFFIRMED.

A. C. Richmond
Admiral, United States Coast Guard
Commandant

Signed at Washington, D. C., this 2nd day of March 1962.